

STATEMENT OF SUBSTANCE OF THE INTERVIEW

As an initial matter, Applicants would like to thank the Examiner, Mr. Gregory Wilson, for the courtesy of a telephone interview extended to Applicants' Attorney, Mr. Enoch E. Peavey, on June 21, 2007. During the interview, Applicants' Attorney requested clarification regarding the status of claims 3, 5, 6, 10 and 14-16 which were rejected under 35 U.S.C. § 112 in the Official Action dated March 22, 2007 (*see*, pages 3 and 4 of the Official Action), but were not indicated as being rejected in any of the applied prior art rejections.

In response to this inquiry, the Examiner indicated that the applied prior art did not disclose the features recited in claims 3, 5, 6, 10 and 14-16. However, the Examiner indicated that he would need to review the amendments made to address the 35 U.S.C. § 112 rejection prior to making a final determination regarding the allowability of claims 3, 5, 6, 10 and 14-16.

REMARKS/ARGUMENTS

Initially, Applicants would like to express their appreciation to the Examiner for the detailed Official Action provided, for the acknowledgment of Applicants' Information Disclosure Statement by return of the Form PTO-1449, for the acknowledgment of Applicants' Claim for Priority and receipt of the certified copy of the priority document in the Official Action, and for acknowledgement that the drawings are acceptable.

Upon entry of the above amendments, claims 1, 5, 6, 8, 11 and 14-16 will have been amended; and claims 2-4, 7, 9, 10, 12 and 13 will have been canceled (without prejudice or disclaimer to the subject matter contained therein). Claims 1, 5, 6, 8, 11 and 14-16 are currently pending. Applicants respectfully request reconsideration of the outstanding rejections, and allowance of all the claims pending in the present application.

In the Official Action, the Examiner rejected claims 1-16 under 35 U.S.C. § 112, second paragraph, for being indefinite.

Without acquiescing to the propriety of the Examiner's rejection, Applicants have amended claims 1, 5, 6, 8, 11 and 14-16 solely in order to more clearly recite the presently claimed invention and to better conform to U.S. Patent practice. In particular, Applicants submit that claims 1, 5 and 6 are directed to a construction method for an exhaust heat recovery boiler; and claims 8, 11 and 14-16 to a heat exchanger tube bundle panel module. Accordingly, the above-noted rejection is believed to be moot and should be withdrawn.

In the Official Action, the Examiner has rejected claims 1 and 8 under 35 U.S.C. § 102(b) as being anticipated by KIDALOSKI et al. (U.S. Patent No. 5,339,891);

has rejected claims 1, 2, 4, 7-9 and 11-13 under 35 U.S.C. § 102(b) as being anticipated by HEIDRICH (U.S. Patent No. 6,588,104); and

has rejected claims 1 and 8 under 35 U.S.C. § 102(b) as being anticipated by SANSOUCY (U.S. Patent No. 5,722,354).

Without acquiescing to the propriety of the Examiner's rejections, Applicants have canceled claims 2-4, 7, 9, 10, 12 and 13 (without prejudice or disclaimer to the subject matter-contained therein) and amended independent claims 1 and 8 solely in order to expedite prosecution of the present application. More particularly, Applicants note that independent claim 1 has been amended to generally incorporate the recitations of dependent claim 3 and independent claim 8 has been amended to generally incorporate the recitations of dependent claim 10. In this regard, Applicants note that claims 3 and 10 have not been rejected by the applied prior art. Further, and as discussed supra, the Examiner acknowledges that the applied prior art does not disclose the features recited in dependent claim 3 and 10 (as well as 5, 6, and 14-16, which have been canceled without prejudice or disclaimer).

Absent a disclosure in a single reference of each and every element recited in a claim, a *prima facie* case of anticipation cannot be made under 35 U.S.C. § 102. Since at least as admitted by the Examiner the applied reference fails to

disclose each and every element recited in independent claims 1 and 8, as well as claims 2, 4, 7, 9 and 11-13 depending therefrom, these claims are not anticipated thereby. Further, all pending dependent claims recite additional features that further define the present invention over the prior art.

Accordingly, the Examiner is respectfully requested to withdraw the rejection under 35 U.S.C. § 102 and allow all pending claims in the present application.

In view of the herein-contained remarks, Applicants submit that independent claims 1 and 8 are in condition for allowance. With regard to dependent claims 2, 4, 7, 9 and 11-13 Applicants assert that they are allowable on their own merit, as well as at least because of their dependency from independent claim 11, which Applicants have shown to be allowable.

Thus, it is respectfully submitted that all of the claims in the present application are clearly patentable over the references cited by the Examiner, either alone or in combination, and an indication to such effect is respectfully requested, in due course.


SUMMARY

Applicants submit that the present application is in condition for allowance, and respectfully request an indication to that effect. Thus, reconsideration of the outstanding Official Action and allowance of the present application and all the claims therein are respectfully requested and is now believed to be appropriate.

Applicants note that this amendment is being made solely to advance prosecution of the application to allowance and should not be considered as surrendering equivalents of the territory between the claim prior to the present amendment and the amended claim. Further, no acquiescence as to the propriety of the Examiner's rejection is made by the present amendment. All other amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
Satoru NEMOTO et al.



Bruce H. Bernstein
Reg. No. 29,027

Steven Wegman
Reg. No. 31,438

June 22, 2007
GREENBLUM & BERNSTEIN, P.L.C.
1941 Roland Clarke Place
Reston, VA 20191
(703) 716-1191